

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JAMES FRANKLIN,

Plaintiff,

v.

Case No. 14-1085

**CAROLYN COLVIN,
Acting Commissioner of the
Social Security Administration,**

Defendant.

DECISION AND ORDER

Plaintiff-Claimant James Franklin (“Franklin”) seeks leave to proceed *in forma pauperis* on the appeal from the denial of his applications for social security disability benefits. (ECF No. 3.) In order to authorize a litigant to proceed *in forma pauperis*, the Court must make two determinations: First, whether the litigant is unable to pay the costs of commencing this action; and, second, whether the action is frivolous or malicious. 28 U.S.C. §§ 1915(a) and (e)(2)(B)(i).

By his petition and affidavit to proceed *in forma pauperis*, Franklin avers that he is not married. He is not employed, owns no valuable assets, and has no money in any type of financial account. He lives with his girlfriend who pays for the rent and groceries. Based on the information

provided, the Court concludes Franklin has satisfied the requirements of 28 U.S.C. § 1915(a) and is unable to pay the \$350 filing fee for this action.

Franklin must next demonstrate that this action has merit as required by 28 U.S.C. § 1915(e)(2)(B)(i). An action is frivolous if there is no arguable basis for relief either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)); *Casteel v. Pieschek*, 3 F.3d 1050, 1056 (7th Cir. 1993).

Under 42 U.S.C. § 405(g), a plaintiff may obtain review of the Social Security Commissioner's decision. The standard of review that the Court is to apply in reviewing the Commissioner's decision is whether the decision is supported by "substantial evidence." 42 U.S.C. § 405(g); *Jens v. Barnhart*, 347 F.3d 209, 212 (7th Cir. 2003).

The Complaint states that the Commissioner's decision regarding the denial of the applications for social security disability benefits is not supported by substantial evidence, and/or is contrary to law. (See Compl. ¶ 7.) (ECF No. 1.) Alternatively, to the extent that new evidence has been submitted to the Appeals Council or this Court, Franklin raises several reasons for requesting a remand of the matter. (*Id.* at ¶ 8.) At this preliminary stage of the proceedings, the Court concludes that there may be a basis in law or in fact for Franklin's appeal of the Commissioner's

decision, and the appeal may have merit as defined by 28 U.S.C. § 1915(e)(2)(B)(i). Therefore, the Court grants Franklin's request to proceed *in forma pauperis*.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT:**

Franklin's petition for leave to proceed *in forma pauperis* (ECF No. 3) is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 8th day of September, 2014.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge